IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

FAO (MVA) No.627 of 2003.

Reserved on:08.05.2007.

Decided on:May 16, 2007

Shiv Dei **…..Appellant.**

VERSUS

Ram Krishan & Ors. **…..Respondents.**

Coram

The Hon'ble Mr.Justice Kuldip Singh, Judge.

Whether approved for reporting?[1] No

For the Appellant: **Mr.R.K.Gautam, Sr.Advocate with Ms.Archna Dutt, Advocate.**

For Respondents No.2 & 3: **Mr.Sanjeev Sood, vice counsel.**

Kuldip Singh, Judge

This appeal has been filed by clamant / petitioner against the award dated 19.9.2003 passed by Motor Accident Claims Tribunal, Bilaspur in MAC Case No.41 of 2002 awarding a sum of Rs.1,50,000/- compensation to petitioner on account of death of her son Mahinder Kumar in an accident on 30.4.2002 involving truck No.HP-11-3527. The award has been passed against respondents No.1 to 3 and respondent No.3, Insurance Company, has been directed to deposit the compensation amount within two months from the date of award failing which the Insurance Company shall be liable to pay simple interest at the rate of 9% per annum from the date of award till

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[1] ***Whether the reporters of the local papers may be allowed to see the Judgment ?Yes***

realization. The parties are referred herein in the same manner as in the impugned award.

2. The brief facts, as pleaded in the claim petition, are that Mahinder Kumar, along with Roop Lal, boarded truck No.HP-11-3527 and loaded shuttering in the truck for which freight was settled Rs.500/-. The respondent No.1 was the owner of the truck and respondent No.2 was driving the truck rashly and negligently when it met with an accident on 30.4.2002. The truck was insured with respondent No.3. It has been alleged that Mahinder Kumar was earning Rs.8000/- per month and he was 20 years of age at the time of accident and was the only son of the petitioner. The petitioner has, thus, claimed Rs.10 lacs compensation on account of death of her son.

3. The respondents No.1 and 2 resisted the petition and admitted that respondent No.1 was the owner and respondent No.2 was driving the truck on 30.4.2002 but it has been denied that due to rash and negligent driving of respondent No.2 the accident has occurred. It has been alleged that due to sudden failure of brakes the accident had taken place. It has also been denied that petitioner was dependant on her son. The respondent No.3 admitted the insurance of the truck but it has been submitted that respondent No.2 was not possessing valid and effective driving licence at the time of accident. Mahinder Kumar was a gratuitous passenger travelling in the truck and his risk was not covered under the policy. The respondent No.3, thus,

denied its liability to indemnify respondents No.1 and 2. The learned Tribunal allowed the petition, as noticed above.

4. I have heard the learned counsel for the parties and have also gone through the record.

5. The learned counsel for the petitioner has submitted that keeping in view the age of the deceased and his income, the petitioner, who was 43 years old at the time of accident, less compensation has been awarded by the Tribunal. The petitioner has appeared as PW-2 and has deposed that the deceased was giving Rs.4000/- to 5000/- per month to her. He was unmarried but there is no corroborative evidence to support the statement of PW-2 that the deceased was paying Rs.4000/- to 5000/- per month to her. The deceased was unskilled labourer. It has not been proved that he was having any specified training in any field. In normal course, he was to be married in 4-5 years when the accident took place. In absence of definite evidence the Tribunal has rightly taken income of deceased Rs.1500-Rs.2000/- P.M. From this income, usual deductions are to be made. The Tribunal has awarded lump sum amount. In lump-sum award all factors for assessing the compensation are taken collectively without giving calculations and details of each head which is otherwise considered for awarding the compensation. It has not been pointed out by petitioner how the lump sum award is on the lower side. The Tribunal in the facts and circumstances of the case has rightly assessed and awarded Rs.1,50,000/- compensation to the petitioner

and against respondents No.1 to 3. In assessing the amount of compensation, the Tribunal has taken into consideration all factors and lump-sum amount of Rs.1,50,000/- has been awarded to the petitioner. The Tribunal has also rightly directed respondent No.3 to pay the compensation as the truck was insured with respondent No.3. However, the Tribunal has erred in allowing interest at the rate of 9% per annum from the date of award till realization. The interest is to be awarded from the date of institution of the petition till realization of the amount. Accordingly, the impugned award is modified only to the extent that on the compensation amount of Rs.1,50,000/- the interest at the rate of 9% per annum is allowed in favour of the petitioner and against respondents from the date of institution of the petition till realization of the amount.

6. In view of the above discussion, the impugned award is modified only to the extent that on the compensation amount of Rs.1,50,000/- awarded in favour of the petitioner and against respondents No.1 to 3 to be paid / deposited by respondent No.3, the interest at the rate of 9% per annum is also payable by respondent No.3 to petitioner from the date of institution of the petition i.e. 26.6.2002 till realization of the whole amount. No costs.

(Kuldip Singh)
Judge.

May 16, 2007
(soni)